

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. PR 06-0120

ROBERT DONAT,

Plaintiff,

v.

S & C CORPORATION, DON BERNARD, PETER
KOTEK, JEFFERSON COUNTY, MONTANA, et al.,

Defendants.

FILED

FEB 16 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

O R D E R

Robert Donat seeks to disqualify the Honorable David Cybulski from presiding in Cause No. DV 08-10942 in the Fifth Judicial District Court, Jefferson County, pursuant to § 3-1-805, MCA. Donat's affidavit in support of his motion to disqualify Judge Cybulski states two bases for the motion. Donat points out that counsel for the defendants in Cause No. DV 08-10942 filed a response to Donat's earlier petition asking this Court to take supervisory control over the District Court in this action. Donat also states Judge Cybulski asked defense counsel to draft a proposed order for the court on defendants' summary judgment motion.

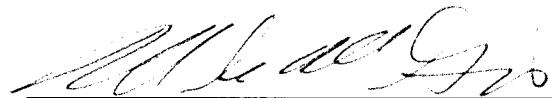
Section 3-1-805, MCA, provides that, if the affidavit filed in support of a motion to disqualify is in compliance with subsections (a), (b), and (c) of that statute, the Chief Justice of this Court will assign a district judge to hear the matter. Section 3-1-805(b), MCA, requires that, in order to be deemed made in good faith, an affidavit in support of a request for disqualification for cause cannot be based solely on rulings in the case, a category that, broadly stated, includes both of the matters about which Donat complains. In addition, we observe that both of the events cited by Donat as grounds for his request to disqualify Judge Cybulski for cause are standard practices among the courts of this state. *See e.g. State v. Thirteenth Jud. Dist. Ct.*, 2009 MT 163, ¶ 2, 350 Mont. 465, 208 P.3d 408 (counsel for

defendant filed response to petition for writ of supervisory control); *Wurl v. Polson School Dist. No. 23*, 2006 MT 8, ¶ 29, 330 Mont. 282, 127 P.3d 436 (a district court may adopt a party's proposed order when it is sufficiently comprehensive and pertinent to the issues to provide a basis for the court's decision). As a result, we conclude it is unnecessary for the Chief Justice to appoint a district judge to hear this matter.

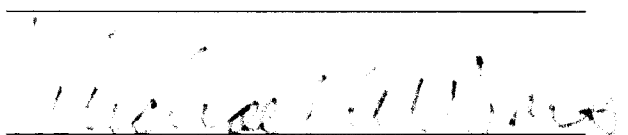
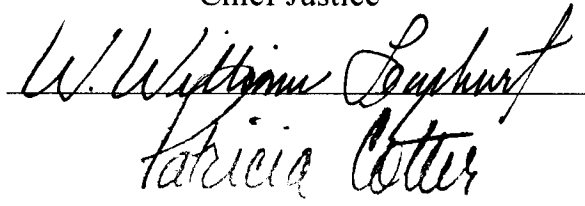
IT IS ORDERED:

1. The request to disqualify District Judge Cybulski from Jefferson County Cause No. DV 08-10942 is DENIED.
2. The Clerk is directed to provide copies of this order to the Clerk of the District Court of Jefferson County for notification to all counsel of record in Cause No. DV 08-10942, and to the Honorable David R. Cybulski, District Judge.

DATED this 6th day of February, 2010.



Chief Justice



Justices

Justice Brian Morris did not participate in this matter.